



U.S. Citizenship  
and Immigration  
Services

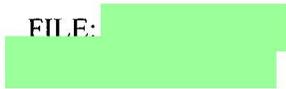
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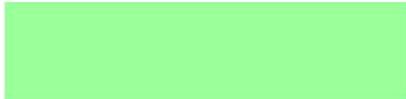
**AUG 26 2014**

OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to us at the Administrative Appeals Office (AAO). We dismissed the petitioner's appeal from that decision, as well as a subsequent motion to reconsider. The petitioner then filed a motion to reopen and reconsider. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the denial of the petition. The petitioner has now filed another motion to reopen and reconsider. We will grant the motion to reopen, dismiss the motion to reconsider, and affirm the denial of the petition.

The petitioner filed the Form I-140 petition on May 2, 2012, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary special education teacher at [REDACTED] Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on October 27, 2012, having found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. We dismissed the petitioner's appeal on March 18, 2013; the petitioner's first motion on November 5, 2013; and her second motion on April 21, 2014.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the petitioner does not identify any errors of fact or law in the AAO's decision on her previous motion. Because the motion does not establish that the decision was based on an incorrect application of law or USCIS policy, and does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision, the motion does not meet the requirements of a motion to reconsider and must be dismissed. *See* 8 C.F.R. §§ 103.5(a)(3), (4). The petitioner does, however, make new claims and submit additional evidence. The new evidence qualifies the motion as a motion to reopen under 8 C.F.R. § 103.5(a)(2).

In her first motion, the petitioner did not claim that the decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Instead, she asked to remain in the United States "for the next 3 years" for various family-related reasons. In dismissing that motion, the AAO stated: "[T]he petitioner does not contest the decision or allege any error of fact or law. Instead, the petitioner seeks favorable treatment based on family considerations. There is no provision of law or regulation to allow reconsideration on this basis."

In her second motion, the petitioner requested special consideration because her relatives in the Philippines had been affected by an earthquake and a typhoon. The petitioner stated that, out of all her relatives, she is "the most equipped to help them rebuild their livelihood and homes." The petitioner

also asserted that her family would not be a burden on the United States economy, but none of the adverse decisions in this proceeding was based on such a finding. In our April 2014 decision affirming the denial of the petition, we stated that the petitioner had sought an employment-based immigration benefit, and that she could not establish eligibility by other means, such as humanitarian considerations.

On motion, the petitioner states that “[l]aws are laws,” and acknowledges that she has not met the requirements for the immigration benefit that she seeks. She then states:

However, a law can rise beyond its periphery; a law can transcend especially if it calls to preserve human dignity. The United States has been champions [*sic*] for humanitarian causes with enduring commitment to protect human dignity beyond color, race, religion, country of origin; this motion . . . to reopen lies from this premise.

The petitioner then describes hardships in her background, her volunteer work both in and outside of school, and the educational achievements of her children. The petitioner states that she “will not stop begging” because many family members are relying on her assistance. The petitioner cites a “memorandum of the USCIS dated November 15, 2013.” The “memorandum” is a page from the USCIS website with the title “USCIS Reminds Filipino Nationals Impacted by Typhoon Haiyan of Available Immigration Relief Measures.” The petitioner cited this same web page in her previous motion, and we addressed this information in our April 2014 decision, stating:

The page listed seven such measures, including “Expedited processing of immigrant petitions for immediate relatives of U.S. citizens and lawful permanent residents” and “Extension of certain grants of parole made by USCIS.” The page also provided instructions on how to obtain more information. The web page did not indicate that previously denied employment-based petitions such as this would be reopened, reconsidered, or approved as a result of the natural disasters in the Philippines.

The petitioner, in her latest motion, does not address or rebut the above discussion. Instead, she repeats the observation that there are “Available Immigration Relief Measures.” The measures described do not include granting immigrant classifications to individuals who have not established eligibility for those classifications; they do not entitle an individual to a choice of immigrant classifications; and they do not suspend or supersede the statute, regulations, and case law governing those classifications.

As we explained in prior decisions, the threshold for the waiver of the job offer requirement is the national interest, rather than the petitioner’s personal circumstances. Congress established this threshold by statute and USCIS has no authority or discretion to alter or expand this provision. *See* section 203(b)(1)(B) of the Act; *see also* 8 C.F.R. § 204.5(k)(4)(ii). The regulation is binding on USCIS employees in their administration of the Act, and USCIS employees do not have the authority to create new grounds for waiving the job offer requirement, either as a matter of general policy or on a case-by-case basis. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner*, 420 F.2d 809, (C.A. Md. 1969) (government agency must scrupulously

observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down).

Although the petitioner states that she accepts our conclusion regarding her eligibility for the waiver, the petitioner discusses new developments in her teaching career. She states: "On March 20, 2014, I applied for the National Board Certification for Teachers upon the invitation of my school principal." The petitioner claims that only 100,000 out of 3.1 million public school teachers in the United States "have achieved this highest mark of certification in the teaching profession." The petitioner does not substantiate this statistic, but even on its face, this certification would not establish eligibility for the national interest waiver. Occupational certification can form part of a claim of exceptional ability under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C), but, by statute, aliens of exceptional ability are generally subject to the job offer requirement. See section 203(b)(2)(A) of the Act. Evidence of exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered" in a given field, cannot alone suffice to show that it is in the national interest to waive the job offer requirement.

The submitted documents show that the petitioner applied for this certification, but the application was still pending when she filed the motion. Evidence of a pending application does not imply future approval of that application. Furthermore, the petitioner filed this application nearly two years after she filed the petition in May 2012. Therefore, even if National Board Certification were evidence of eligibility for the waiver (which is not the case), the petitioner did not hold that credential when she filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). For this same reason, any future submission showing approval of the petitioner's application for National Board Certification will not be grounds for approval of the petition.

The statute and regulations specify that a waiver of the job offer requirement must be based on the national interest, rather than on individual hardships of the person seeking the waiver. The means to qualify for the waiver are spelled out in *In re New York State Dep't of Transportation (NYS DOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). The petitioner has not claimed to have met the applicable requirements. Instead, she requests essentially a customized waiver based on her family circumstances, her children's educational status, and other factors. Essentially, the petitioner seeks a form of relief that does not exist under current statute, regulations, and case law.

The petitioner's submission does not meet the requirements of a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(4) therefore requires the dismissal of the motion. The petitioner has submitted new evidence, qualifying the filing as a motion to reopen, but the newly submitted evidence does not establish the petitioner's eligibility for the benefit sought. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The motion to reconsider is dismissed. The denial of the petition is affirmed.